In The

Supreme Court of the United States

OCTOBER TERM, 1975

FILED
MAY 6 1976
MICHAEL RODAK, JR., CLERK

No. 75-1252

DONALD L. WAMP, CARL L. GIBSON, SHERMAN L. PAUL and MOCCASIN BEND ASSOCIATION,
Petitioners,

vs.

CHATTANOOGA HOUSING AUTHORITY, CITY OF CHATTANOOGA, TENNESSEE, CAMERON-OXFORD ASSOCIATES, ADVANCE MORTGAGE CORPORATION, MILLIGAN-REYNOLDS GUARANTY TITLE AGENCY, INC., THE UNITED STATES OF AMERICA EX REL. THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT and also EX REL. THE FEDERAL HOUSING ADMINISTRATION,
Respondents.

BRIEF ON THE PART OF RESPONDENTS, CAMERON-OXFORD ASSOCIATES, ADVANCE MORTGAGE CORPORATION, AND MILLIGAN-REYNOLDS GUARANTY TITLE AGENCY, INC., TO THE PETITION FOR A WRIT OF CERTIORARI FILED BY THE PETITIONERS

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BRIEF ON THE PART OF RESPONDENTS, CAMERON-OXFORD ASSOCIATES, ADVANCE MORTGAGE CORPORATION, AND MILLIGAN-REYNOLDS GUARANTY TITLE AGENCY, INC., TO THE PETITION FOR A WRIT OF CERTIORARI FILED BY THE PETITIONERS

The respondents, Cameron-Oxford Associates, Advance Mortgage Corporation, and Milligan-Reynolds Guaranty Title Agency, Inc., respectfully pray that the Writ of Certiorari sought by the petitioners in this cause to review the order of the United States

Court of Appeals for the Sixth Circuit rendered in this matter on December 5, 1975, which affirmed the prior order of the United States District Court for the Eastern District of Tennessee dismissing this action, be denied and that the orders of the lower courts be affirmed.

PRIOR OPINIONS AND ORDERS IN THIS CAUSE

1. The Opinion of the United States District Court for the Eastern District of Tennessee dismissing this action is set forth at page A1 herein. This opinion is reported in 384 F. Supp. 251.

2. The Judgment of Dismissal entered in the United States District Court for the Eastern District of Tennessee pursuant to the above opinion is set forth at page A13 herein.

3. The Opinion of the United States Court of Appeals for the Sixth Circuit affirming the dismissal of this case is set forth at page A15 herein.

4. The Judgment entered in the United States Court of Appeals for the Sixth Circuit pursuant to their opinion is set forth at page A18 herein.

5. The Order on Mandate entered in the United States District Court for the Eastern District of Tennessee, Southern Division, pursuant to the judgment of the Court of Appeals is set forth at page A20 herein.

All as more fully set forth in the above opinions, this suit has been dismissed upon the ground that the petitioners had no standing to sue.

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JURISDICTION

The petitioners properly invoked the jurisdiction of this Court, pursuant to 28 U.S.C., Sec. 1254(1), and the Petition for Certiorari was timely filed.

QUESTIONS PRESENTED FOR REVIEW

The single and central issue before the Court is the following question:

Did the Petitioners Have Standing to Sue?

This case was originally brought in the Chancery Court of Hamilton County, Tennessee, and thereafter timely removed from said Court to the United States District Court for the Eastern District, Southern Division, by the defendants. Thereafter, the District Court held that the petitioners lacked standing to bring the original suit under Tennessee law and, accordingly, removal jurisdiction failed to exist in the Federal District Court, with the result that the action was dismissed. The District Court further held that a requested amendment by the petitioners seeking to charge some of the defendants with violation of portions of the National Environmental Policy Act, 42 U.S.C., Sec. 4332, was not allowed. The foregoing actions on the part of the District Court were in all things affirmed by the Circuit Court.

Implicit in the central issue are the following subissues:

A. Did the petitioners have standing to bring this suit in the Courts of the State of Tennessee?

B. If petitioners had no standing to bring the initial action in the Tennessee State Courts, did the petitioners acquire standing to bring suit following the removal of this cause to the Federal Court?

C. Did the Federal Court abuse its discretion in failing to allow the requested amendment on the part of the petitioners on possible NEPA issues?

Other issues sought to be raised by the petitioners, such as whether or not there was a violation of NEPA requirements (for example, a possible failure to file an Environmental Impact Statement), whether or not the Chattanooga Housing Authority violated any statute of the State of Tennessee or any provision of the Federal Housing Act, and other like matters, are not proper objects for consideration by this Court as the same deal with the subject matter of this controversy (which was never tried), and while such issues have a bearing on jurisdiction, they have no bearing on the central issue of the petitioners' standing to sue.

STATUTES INVOLVED

1. The Federal Housing Act, and more particularly the following sections of said Act:

42 U.S.C., Sec. 441,
42 U.S.C., Sec. 1455, and
42 U.S.C., Sec. 1446
(now Sec. 1434)

2. The Tennessee "The Housing Authority's Law", being T.C.A. 13-801 through T.C.A. 13-833.

3. The National Environmental Policy Act, 42 U.S.C., Sec. 4321, et seq.

As these statutes are involved in this matter solely because of the initial allegations by the petitioners that the same were violated by some of the defendants, and such violation, or lack thereof, was not an issue passed upon by the lower courts, said statutes are not here set forth in full as the content thereof is not material

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to the issues before the Court, there being no issue raised at any point with respect to whether or not the removal of this cause of action by the defendants from the State Court to the Federal Court was in any way other than proper, as original jurisdiction would have existed in the Federal Court as well as the State Court. The amount in question exceeds the sum of Ten Thousand ($10,000.00) Dollars.

STATEMENT OF THE CASE

Four individuals and an association filed this action on February 13, 1974, to enjoin the construction of an apartment complex to be located on certain real property in an urban redevelopment area located in downtown Chattanooga, Tennessee. The area is commonly known in Chattanooga as the "Golden Gateway", and in part is composed of the remnant of Cameron Hill. Many years prior to the instant controversy, the height of Cameron Hill had been considerably reduced as a part of the freeway program in Chattanooga and the ground from the top of the hill had been used for a freeway fill. The petitioners sought to cancel the deed from the Chattanooga Housing Authority to Cameron-Oxford Associates, said deed being dated December 19, 1973. The petitioners further sought the cancellation of a deed of trust executed by Cameron-Oxford to Milligan-Reynolds Guaranty Title Agency, Inc., as Trustee, on December 19, 1973, said deed of trust securing the payment of a note in the principal sum of $4,210,600.00 payable to the order of the defendant, Advance Mortgage Corporation, the proceeds of said note which were to have been used, and were in fact used, for the construction of the apartment complex upon the Cameron Hill site by Cameron-Oxford. The petitioners further sought the Court to direct the

Chattanooga Housing Authority to hold public hearings with respect to the resale of the property in the event their petition to set aside the sale of the property to Cameron-Oxford by the Housing Authority was allowed. The petitioners sought to enjoin any construction by Cameron-Oxford upon the Cameron Hill site. Additionally, the petitioners sought to reestablish a park upon the Cameron Hill site, there having been many years ago a park located upon said Hill commonly known as Boynton Park. The petitioners filed their action in the Chancery Court of Hamilton County, Tennessee, seeking the relief referred to above. They further requested that the Chancery Court grant to them an immediate show-cause hearing. A number of the defendants timely filed removal petitions (2A, 24A). The removal petitions were proper and the cause was removed to the United States District Court for the Eastern District of Tennessee. The several defendants filed varying responses to the initial complaint, including an Answer and Counter-Claim by the defendant, Cameron-Oxford (27A), a Motion to Dismiss by the Chattanooga Housing Authority, Answers by the defendants, Advance Mortgage and Milligan-Reynolds Guaranty Title Agency, Inc., and other defensive pleading by the other defendants. The issue of the standing on the part of the petitioners to sue was properly raised in all of said defensive pleadings.

A conference was held in the Chambers of the Federal District Judge with regard to the show-cause hearing which had been originally set for March 6, 1974, with the result that the parties (with the consent of the petitioners) agreed that the show-cause hearing was continued until June 27, 1974 (37A-38A). Notwithstanding their agreement, the petitioners on March 13, 1974, again moved the District Judge for an injunction

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enjoining the construction of the apartment complex because of alleged violation by some of the defendants of certain sections of the National Environmental Policy Act (38A). At the same time the petitioners filed a Motion to Amend their original complaint so as to include allegations of alleged violations of NEPA requirements relative to the apartment complex (39A).

This Motion Was Never Granted by the District Judge

On April 11, 1974, the District Court set for hearing the question of whether or not the petitioners had standing to bring this suit in the Tennessee State Court and assert questions of Tennessee law and Federal law and, at the same time, whether or not petitioners' special motion for preliminary injunction pursuant to Rule 65 dealing with the issue of whether or not petitioners were entitled to enjoin the construction of the apartment complex because of the purported failure on the part of the defendants (or some of them) to file an adequate Environmental Impact Statement (43A). No other questions were presented at the hearings which began on April 29, 1974, and continued from time to time until completed on May 13, 1974, and proof on any other issue was not had. At no time were the petitioners allowed to amend their original complaint.

From the testimony at the hearings and from the record, the following facts were affirmatively established:

The urban renewal program, of which the Cameron Hill acreage is a part, was commenced in 1957. As stated above, the project was known as the "Golden Gateway Urban Renewal Program (R 3-4, 447). The area was located in the vicinity of the downtown area and at the time of the commencement of the program was predominantly a blighted residential area. Part and parcel of the renewal plan was the shaving off of

Cameron Hill by some one hundred twenty-five (125) feet, thereby providing a major source of fill dirt for that portion of an interstate highway that bisected the Golden Gateway area. In the process of this dirt movement, Boynton Park was to be destroyed (R 78, 55; 79A).

One of the plaintiffs in this action (Moccasin Bend Association) actively sought to stop the lowering of Cameron Hill. The Association brought an action in the Tennessee State Courts attempting to enjoin the destruction of Boynton Park and the shaving of Cameron Hill. The matter went all the way to the Tennessee Supreme Court and the Association was singularly unsuccessful. Despite the Association's having had its day in Court, at least some of its members understand this action to be primarily an attempt to legally reestablish the existence of Boynton Park and nothing more (R 127, 381-382, 79A).

The general procedure in urban renewal projects is that the local authority in charge of the project is obligated to establish a reuse plan for the acreage to be developed. This plan must be approved by HUD and cannot be changed without that organization's agreement (R 88). The original reuse plan with regard to the Golden Gateway was promulgated in 1958 and was subsequently amended in 1968 (R 82-88). The original plan, as well as the amendment, contemplated that Cameron Hill, after being lowered, would be used for residential purposes with a seven acre plot of the twenty-two acres being made available for commercial development *only* where that commercial development was for the purpose of rounding out the overall residential development (R 20-31, 23-26).

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The Chattanooga Housing Authority in 1969 advertised for proposals for the development of the entire Cameron Hill tract, consistent with the reuse plan (Ex. 37). This was the largest and most complex project in the urban renewal area (R 50). At that time Cameron Hill was within the Chattanooga Fire Zone, requiring substantially more expensive fire-proof construction than outside the zone (R 281-283, 464-466). The invitation to bid required the developer to include the dedication of a public park in his proposal, but left the size and location of the park to the developer (R 11-12, Ex. 37). It also required the developer to include with his proposal "a fully completed and executed statement for Public Disclosure" as required by 42 U.S.C., Sec. 1455(e)(1) (Ex. 137). This requirement was complied with by subsequent successful bidder, i.e., Future Chattanooga Development Corporation.

The only bid submitted on the day the bids were to be opened was that of Future Chattanooga Development Corporation (R 36, 454), which proposed to build a 600-unit apartment complex estimated to cost $12,000,000.00 to $15,000,000.00 (R 36-39), with an offer of $345,000.00 for the public land (See CHA minutes for October 16, 1969, Exhibit 11).

Future Chattanooga Development Corporation's proposal, however, was expressly conditioned upon its being able to obtain the necessary financing for the proposed project, which it had yet to achieve (R 42-43).

In 1970, Cameron Hill was excluded from the fire zone by Chattanooga City Ordinance 17-51, thus permitting substantially cheaper construction (about 20%) than was permitted at the time of the 1969 bidding (R 282-283, 464-466).

Future Chattanooga Development Corporation continued to make a concerted effort to obtain financing for the Cameron Hill project. Its efforts continued to be unsuccessful. In May of 1972 Future Chattanooga Development Corporation proposed to Chattanooga Housing Authority that Broadmoor Shopping Centers, Inc., be allowed to join as a joint venturer in the Cameron Hill project (R 457). Chattanooga Housing Authority agreed to this request and thereafter the joint venturers submitted a revised proposal of development to Chattanooga Housing Authority which did not include certain acreage fronting on Ninth Street in Chattanooga. Chattanooga Housing Authority entered into a contract with the joint venturers on June 9, 1972, which provided for the purchase of the remaining acreage by the joint venturers for $220,000.00. This contract was known to all petitioners herein. The contract price was known to all petitioners herein. No objections were made by the petitioners with regard to the contract at the time it was entered into (June 1972), nor do they in this appeal object to the purchase price as set out in that contract. That contract further provided that the joint venturers would be obligated under the contract only after they were able to obtain the necessary financing (R 43-44).

The joint venturers continued to make efforts to obtain financing up until November 21, 1973, when it was announced in open meeting of Chattanooga Housing Authority that Future Chattanooga Development Corporation was being dissolved and was withdrawing from the project (R 65, 460, 461). It was further announced that a limited partnership was being organized which would be made up of Oxford Development Corporation as the general partner and subsequent

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investors as limited partners. The consent of Chattanooga Housing Authority was given at said meeting to this new arrangement and to the conveyance of the Cameron Hill acreage to the proposed limited partnership.

On November 29, 1973, an Indiana limited partnership was formed, known as Cameron-Oxford Associates, whose certificate was recorded in Hamilton County, Tennessee, on December 12, 1973 (Ex. 47). Said certificate described the Cameron Hill realty as its place of business and showed that the general partner was Oxford, with a five percent interest, with Lyle A. Rosenzweig, Trustee, of Indianapolis, Indiana, being the limited partner, with a ninety-five percent interest, in exchange for $100.00 contributed to the partnership.

On December 19, 1973, Chattanooga Housing Authority executed a special warranty deed to Cameron-Oxford Associates, conveying a portion of the Cameron Hill realty, including approximately 16 acres of the flat 22 acres on top, for the sum of $157,000.00 (Ex. 45, R 102, 489). Chattanooga Housing Authority did this pursuant to the June 9, 1972 contract with Future Chattanooga Development Corporation and Broadmoor Shopping Centers, Inc., to which Cameron-Oxford Associates was not a party (R 103). The deed requires construction by the Grantee of the apartment project as ultimately proposed by Future Chattanooga Development Corporation and Broadmoor Shopping Centers, Inc., to Chattanooga Housing Authority. It is the intention of Chattanooga Housing Authority and Cameron-Oxford Associates that the remainder of Cameron Hill be later conveyed to Cameron-Oxford Associates for similar housing development at a similar

per acre price as otherwise called for by said contract of June 9, 1972. Public disclosure of the principal members and investors in Cameron-Oxford Associates was not completely made by the time this lawsuit was filed due to the fact that the limited partnership interest had not been sold or placed by the general partner, Oxford Development.

Cameron-Oxford commenced preliminary construction of the apartment complex in January of 1974 prior to the institution of this suit. As a part of the plans for the construction, a park site was agreed to by the Housing Authority and Cameron-Oxford, and although technically outside of the record in this cause (but, as admitted by the attorney for the petitioners during the argument of this cause before the Court of Appeals), the park that was to replace old Boynton Park has been set aside and dedicated and is now located upon the public road which enters the apartment complex on the top of the hill. Said park comprises some six acres. The apartment complex is 100% complete and fully rented.

Most importantly, it was established at the hearings that the petitioner, Donald Wamp, owns property within Chattanooga and is accordingly a taxpayer of that city. He is an architect by profession. *His only interest in the subject matter of the lawsuit is derived from his status as a municipal taxpayer and a resident architect.* The petitioners, Mark K. Wilson, Jr., and Carl Gibson, were not identified in the evidentiary hearing, their interest in the lawsuit having been described in the complaint as taxpayers of "Chattanooga and/or Hamilton County, Tennessee". The petitioner, Sherman L. Paul, is a non-resident of Chattanooga, but is a resident of Hamilton County, resid-

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ing on Signal Mountain, Tennessee. He is a former County Tax Assessor and is President of the Moccasin Bend Association. His interest in the lawsuit is derived from his status as a taxpayer of Hamilton County and his position as President of the Moccasin Bend Association. The petitioner, the Moccasin Bend Association, is a non-profit corporation having as one of its purposes the preservation and enhancement of historic and scenic landmarks in the Chattanooga area, including Cameron Hill. The re-establishment of Boynton Park on Cameron Hill in a manner deemed adequate is an area of particular interest to the Association and its members.

Suffice it to say in summary, the interest of each individual petitioner is that of a civic-minded taxpayer of the City or County wherein Cameron Hill is located. The interest of the corporate petitioner is that of an association concerned with the preservation of local scenic and historic landmarks. Neither petitioner asserts any ownership in Cameron Hill or any economic or financial interest in its disposition other than as taxpayers or, in the case of Moccasin Bend Association, as a civic improvement organization. Nor do they claim any special injury to themselves, different from that which might be asserted by any civic-minded taxpayer or by any association concerned with the preservation and enhancement of local areas having scenic and historic attributes.

Following the hearings and before any trial of the case, the Federal Judge dismissed the complaint for the reasons set forth in his Opinion dated September 19, 1974 (A1 herein), because of a lack of standing on the part of the petitioners to bring the action under Tennessee law, and the Judge's ruling was duly affirmed

by the Court of Appeals (See their Opinion, which is A15 herein).

ARGUMENT

I.

The Petitioners Do Not Have Standing to Sue Pursuant to the Law of the State of Tennessee

It is well established in the State of Tennessee that citizens and taxpayers are without standing to maintain a lawsuit with respect to the restraint or direction of governmental action unless they allege and establish that they will suffer some special injury not common to citizens and taxpayers generally. This rule is well established in the State of Tennessee and the two leading cases involved, both of which are thoroughly discussed by the District Judge in his Opinion, are *Patton* v. *City of Chattanooga*, 108 Tenn. 197, 65 S.W. 414 (1901) and *Badgett* v. *Rogers*, 222 Tenn. 374, 436 S.W. 2d 292 (1968). The plaintiffs admitted the rule but merely take issue with its interpretation or, to be more precise, they maintain that the original complaint filed herein comes within the exceptions to the general rule set out in *Badgett*. The Court below occupied itself with this insistence and observed that:

> "With regard to the contention of the individual plaintiff-taxpayers that they come within the exception announced in *Badgett* v. *Rogers*, supra, affording standing to a taxpayer to litigate an alleged misuse of public funds, there are two difficulties. The first is that the exception stated in the *Badgett* case refers only to the misuse of public funds, not to the misuse of public property.

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> The present case involves the alleged mismanagement of property in an urban renewal project. Each case cited in the *Badgett* case in support of the exception therein stated pertains to the levying of an unlawful tax or the unlawful expenditure of public funds. The plaintiffs have cited no Tennessee case and the Court has been unable to find one wherein the courts of Tennessee have allowed a taxpayer claiming no special injury to maintain a suit for mismanagement of public property."
>
> "In the second place, while the complaint avers many irregularities upon the part of the Chattanooga Housing Authority in the disposition of the Cameron Hill tract and the evidence reflects that a number of unusual, if not questionable, practices were followed by that agency in the negotiation and awarding of a contract disposing of the Cameron Hill tract, the Court, with but one possible exception, is unable to find any specific instance of illegal conduct on the part of the Chattanooga Housing Authority or any other defendant with regard to that disposition. Rather, each action appears to have been within the legislative or administrative authority or discretion of the various agencies and defendants involved." (75A, 76A).

The decision of the District Court with regard to this contention made by the petitioners becomes even more understandable when one reads that portion of *Badgett* which deals with not only the general rule of law in this area but the exception to that rule:

> "Thus, without averment by the complaining litigant of a special interest, status or wrong, the courts have not permitted citizens to interfere with

the granting of a franchise, *Patton* v. *Chattanooga* (1901), 108 Tenn. 197, 65 S.W. 414; with a municipal contract, *Wilkins, et al.* v. *Chicago, St. Louis and New Orleans Railroad Co., et al.* (1903), 110 Tenn. 422, 75 S.W. 1026; with the initiation of new housing projects, *Walldorf, et al.* v. *City of Chattanooga, et al.* (1951), 192 Tenn. 86, 237 S.W. 2d 939; with the selection of county officials, *Buford, et al.* v. *State Board of Elections* (1960), 206 Tenn. 480, 334 S.W. 2d 726, or, with the relocation of school facilities, *Reams* v. *Board of Mayor and Aldermen of McMinnville* (1927), 155 Tenn. 222, 291 S.W. 1067."

"However, the courts have recognized an exception to the general rule where it is asserted that the assessment or levy of a tax is illegal or that public funds are misused or unlawfully diverted from stated purposes."

"Thus, relief has been granted where officials entered into a contract which would have diverted funds from their authorized purpose, *Pope, et al.* v. *Dykes, et al.* (1905), 116 Tenn. 230, 93 S.W. 85; where the unconstitutional formation of a new county was underway, *Ford* v. *Farmer, et al.* (1848), 28 Tenn. 152; where the purpose of an appropriation did not clearly appear, *Southern* v. *Beeler, et al.* (1946), 183 Tenn. 272, 195 S.W. 2d 857; where a tax was levied without statement of the purpose for which the tax yield would be used, *Southern Railroad Company* v. *Hamblen County* (1905), 115 Tenn. 526, 92 S.W. 238; *Southern Railroad Company, et al.* v. *Hamblen County, et al.* (1906), 117 Tenn. 327, 97 S.W. 455; and where tax funds were used for other than their prescribed

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purpose, *Kennedy* v. *Montgomery County* (1897), 98 Tenn. 165, 38 S.W. 1075." 436 S.W. 2d 292, pp. 294-295.

There is no testimony in the record or factual basis for any finding that the petitioners come within the exception referred to in the *Badgett* case. There are no allegations of or proof with respect to any misuse or misapplication of public funds. There is complaint that the Chattanooga Housing Authority did not properly comply with the procedures established by law in its dealing with the defendant, Cameron-Oxford, and with Future Chattanooga, but these are administrative matters not subject to review, and do not involve any alleged misapplication of funds or tax monies. The only real grievance which the petitioners have is their subjective thought that the residue of Cameron Hill might be better used for some other purpose (or some more expensive housing project) than, in fact, the same was utilized for, and further that Boynton Park as re-established is not as pretty a park (in their opinion) as the same existed many years ago. It follows that the main thrust of the complaint therefore is not an alleged misuse of public lands, funds, or any other item. It is simply that the petitioners disagree with the use and, in particular, with the size and location of the new Boynton Park, and it must follow that this subjective thought process can in no way be interpreted, distorted, or squeezed so as to fit the exception in the *Badgett* rule. The petitioners, accordingly, clearly fall within the "general rule of long standing in Tennessee, individual citizens and taxpayers may not interfere with, restrain or direct official acts, when such citizens fail to allege and prove damages or injuries to themselves different in character and kind from those sustained by the

public at large." *Badgett* v. *Rogers*, 222 Tenn. 374, 436 S.W. 2d 292 (1968).

The lower courts correctly applied the Tennessee controlling decisions with respect hereto.

II.

There Was No Abuse of Discretion on the Part of the District Judge in Failing to Allow Petitioners' Requested Amendment Based Upon Alleged Violations of NEPA.

The Court below did not allow petitioners' Motion to Amend their original complaint, which Amendment would have added an allegation of a violation of the National Environmental Policy Act. In not allowing the amendment it is the contention of the petitioners that the Court was in error, but the petitioners apparently make no claim that the Court abused its discretion in denying the amendment. Several of the parties, including the defendant, Cameron-Oxford, had filed an Answer prior to the time the amendment was offered. In fact, Cameron-Oxford had filed a Counter-Claim. It results that the action on the part of the Federal Judge is not susceptible to review on appeal except in those instances where the District Judge abuses his discretion. There was no complaint before the Court of Appeals with respect to such alleged abuse of discretion and no express complaint to that effect in this court. The foregoing rule is well established. See *Zenith Radio Corp.* v. *Hazeltine Research, Inc.*, 401 U.S. 321 (1971); *Comie* v. *Buehler Corp.*, 449 F. 2d 644 (CA 9th 1971); *Hale* v. *Ralston Purina Co.*, 432 F. 2d 156 (CA 8th 1970).

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III.

The Jurisdiction of a Federal Court Upon Removal Is a Derivative Jurisdiction and If the State Court Lacked Jurisdiction, So Does the Federal Court.

As has been established, under Tennessee law the petitioners had no standing to bring this suit. In any event, no State Court has jurisdiction over HUD and/or FHA to review any administrative act of either agency with regard to this project. State Court jurisdiction with respect to HUD projects is limited to certain violations of constitutional rights and/or rights in certain areas with respect to condemnation, none of which is involved here. See *City of Buffalo* v. *Mollenberg-Betz Mach. Co.*, 279 N.Y.S. 2d 842 (1955), and *Green St. Assn.* v. *Daley*, 373 F. 2d 1 (CA 7th 1967), Cert. Denied, 387 U.S. 932. Whether or not a complaint sounds in alleged violation of Federal statutes, or whether or not such a complaint arises solely from common law or State statutory violations, the fact remains that to bring suit plaintiffs must have standing. Standing is not to be confused with jurisdiction. Standing is a State Court question in this suit even though Federal statutes were involved in the subject matter sought to be reviewed in the Court, and the Court of Appeals correctly holds and affirms the foregoing rule as follows:

> "In *Lambert Co.* v. *Baltimore & Ohio R.R. Co.*, 258 U.S. 377, 382 (1922), the Supreme Court, speaking through Mr. Justice Brandeis, said:
>
> > The jurisdiction of the federal court on removal is, in a limited sense, a derivative jurisdiction. If the state court lacks jurisdiction of the subject-matter or of the parties, the federal court acquires none, although it might in a like

suit originally brought there have had jurisdiction.

Lambert was followed and applied in this court in *Bancohio* v. *Fox*, 516 F.2d 29 (6th Cir. 1975), in which numerous other decisions are cited to the same effect. See also *Friedr. Zoellner Corp.* v. *Tex. Metals Co.*, 396 F.2d 300, 301 (2d Cir. 1968).

Even if federal standing decisions were applicable, appellants would be met by the decisions of this Court in *Gibson & Perin Co.* v. *City of Cincinnati*, 480 F.2d 936 (6th Cir. 1973), cert. denied, 414 U.S. 1068 (1973); and *South Hill Neighborhood Association* v. *Romney*, 421 F.2d 454 (6th Cir. 1969), cert. denied, 397 U.S. 1025 (1970)."

IV.

The Proposed Reestablishment of Boynton Park Confers No Standing Upon Petitioners.

As pointed out in the courts below, these petitioners are both equitably and judicially estopped from what it would appear is the true purpose of their complaint, i.e., the reestablishment of Boynton Park in the grand manner that they would envision. It is to be remembered that the petitioner, Moccasin Bend Association (with others), some years prior to the instant suit had brought another suit against the Chattanooga Housing Authority seeking to restrain the Housing Authority from abolishing Boynton Park and changing the natural contours of Cameron Hill. In an unpublished opinion entered on November 9, 1962, the Supreme Court of Tennessee held:

"The litigation resulted in an adjudication by the Tennessee Supreme Court that 'the bill fails to show any proposed illegal action of the Housing

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Authority' and 'these complainants are entitled to no rights in Boynton Park other than those common to all citizens of Chattanooga'. See, *Mrs. Sim Perry Long, et al.* v. *Chattanooga Housing Authority, et al.* (unpublished opinion entered November 9, 1962)."

CONCLUSION

For the foregoing reasons it is respectfully submitted that the Writ of Certiorari sought by the petitioners to review the action of the United States Court of Appeals for the Sixth Circuit approving the decision of the United States District Court for the Eastern District of Tennessee, Southern Division, be denied and that the judgments of said courts be in all things affirmed.

Respectfully submitted,

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May 5, 1976

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APPENDIX

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE, SOUTHERN DIVISION

CIV-1-74-41

DONALD L. WAMP; MARK K. WILSON, JR.; CARL L. GIBSON; SHERMAN L. PAUL; and MOCCASIN BEND ASSOCIATION, a Tennessee non-profit corporation,

Plaintiffs

-vs.-

CHATTANOOGA HOUSING AUTHORITY, a Tennessee corporation; CITY OF CHATTANOOGA, TENNESSEE, a municipal corporation; CAMERON-OXFORD ASSOCIATES, an Indiana limited partnership; ADVANCE MORTGAGE CORPORATION, a Delaware corporation; MILLIGAN-REYNOLDS GUARANTY TITLE AGENCY, INC., a Tennessee corporation; THE UNITED STATES OF AMERICA, ex rel the UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT and also ex rel the FEDERAL HOUSING ADMINISTRATION,

Defendants

OPINION

(Filed September 19, 1974)

This is an action in which the plaintiffs seek to enjoin the construction of an apartment complex upon Cameron Hill, a local landmark within an urban re-

newal project in Chattanooga, Tennessee. The plaintiffs seek further to obtain a cancellation of the deeds and contracts between the developer and the government agencies in interest and to compel a re-evaluation, re-solicitation, and redisposition of the Cameron Hill tract. The lawsuit was filed in the state court and removed to this court. It is presently before this Court upon the following motions: (1) motions on behalf of the defendants, Chattanooga Housing Authority and the City of Chattanooga, to dismiss the complaint for lack of standing on the part of the plaintiffs to maintain the lawsuit (Court File #8 and #11); (2) motion on behalf of the plaintiffs for a preliminary injunction (Court File #17); (3) motion on behalf of the plaintiffs to amend their complaint so as to allege a cause of action for violation of the National Environmental Policy Act of 1969, 42 U.S.C. § 4332(2)(c) (Court File #18); and (4) motion on behalf of the defendant, Chattanooga Housing Authority, for summary judgment (Court File #29). An evidentiary hearing extending over portions of three days was held on the plaintiffs' motion for a temporary injunction and the case is now before the Court upon the record thus established.

A threshold question in this lawsuit is with reference to the removal jurisdiction of this Court, for, as noted, this lawsuit was filed in the state court and removed to this court. The defendants, the United States Department of Housing and Urban Development (HUD) and the Federal Housing Authority (FHA), petitioned for removal, averring federal agency removal jurisdiction under 28 U.S.C. § 1346(a)(2) and § 1441(a). The other defendants petitioned for removal averring federal question removal jurisdiction under 28 U.S.C. § 1331 and § 1441. The parties have raised no issue regarding removal jurisdiction but the defendants have

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each asserted a lack of standing upon the part of the plaintiffs to maintain the lawsuit. That assertion of necessity raises the issue of removal jurisdiction, for a finding of a lack of standing would prevent the existence of a "case or controversy," a prerequisite to federal court jurisdiction under Article III of the Federal Constitution. (*Association of Data Processing Service Organizations, Inc.* v. *Camp*, 397 U.S. 150, 25 L. Ed. 2d 184, 90 S. Ct. 827 (1970); *Sierra Club* v. *Morton*, 405 U.S. 727, 31 L. Ed. 2d 636, 92 S. Ct. 1361 (1972). In the absence of jurisdiction, no right of removal could exist.

In considering the issue of standing, further principles of removal law must be borne in mind. The first such principle is that the right of removal must have existed as of the time removal was attempted and the pleadings must be viewed accordingly. *American Fire & Casualty Co.* v. *Finn*, 341 U.S. 6, 95 L. Ed. 702, 71 S. Ct. 534 (1951); *McLeod* v. *Cities Service Gas Co.*, 233 F. 2d 242 (10th Cir., 1956). Developments in the lawsuit or attempted amendments to the pleadings subsequent to removal cannot serve to confer federal court jurisdiction if none in fact existed as of the time of removal. Accordingly, the jurisdictional issue must be resolved before the Court can consider the plaintiffs' post-removal motion to amend their complaint or the plaintiffs' motion for a temporary injunction.

A second principle of removal law that must be borne in mind is that jurisdiction in the state court is also a prerequisite to removal of a lawsuit to the federal court, as federal court removal jurisdiction is to this extent derivative. In the absence of state court jurisdiction, a dismissal rather than a remand of the lawsuit is required. *Lambert Run Coal Co.* v. *Balti-*

more & O. R. Co., 258 U.S. 377, 66 L. Ed. 671, 42 S. Ct. 349 (1922); *Venner* v. *Michigan Central R. Co.*, 271 U.S. 127, 70 L. Ed. 868, 46 S. Ct. 444 (1926); *Freeman* v. *Bee Machine Co.*, 319 U.S. 448, 87 L. Ed. 1509, ... S. Ct. .... (1943). *See also* Moore's FEDERAL PRACTICE, Vol. 1A, § 0.164[2] note 41 and § 0.157[3].

It is appropriate, therefore, to look initially to the issue of jurisdiction in the state court prior to removal. It is also appropriate to note that the lack of standing of a party to maintain a lawsuit has been held to be jurisdictional in the Chancery Courts of Tennessee. In *Patton* v. *Chattanooga*, 108 Tenn. 197, wherein the issue was with regard to the standing of a taxpayer to maintain an action in chancery court against a municipality, the rule was stated thusly at page 227:

> "Thus examined, the Tennessee cases show that the court had *jurisdiction* to pass on questions, admittedly of a judicial nature, only when such *jurisdiction* is invoked 'by those having a special or peculiar interest in the question and there are none to the contrary'." (Emphasis supplied)

With regard to the interest of the plaintiffs in this lawsuit, the original complaint avers that each of the four individual plaintiffs "is a taxpayer to the City of Chattanooga, Tennessee and/or Hamilton County, Tennessee". The plaintiff, Moccasin Bend Association, is averred to be a non-profit corporation having as one of its primary concerns "the proper development of Cameron Hill and Moccasin Bend, prominent local historical landmarks". The complaint then proceeds to aver that some 15 years ago the Chattanooga Housing Authority acquired certain property in or adjacent to the downtown commercial area of Chatta-

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nooga in the course of an urban renewal project known as the "Golden Gateway Urban Renewal Project". Included within the property acquired was Cameron Hill, which in turn included a previously existing municipal park known as "Boynton Park". It is further averred that in December of 1973 the defendant, Chattanooga Housing Authority, effected a sale of the Cameron Hill tract to the defendant, Cameron-Oxford Associates, a limited partnership, upon the commitment of the latter to erect an apartment complex on the tract. Various irregularities are alleged on the part of the Chattanooga Housing Authority in planning for the use of the Cameron Hill tract and in effecting a sale of that tract, including (a) failure to permit adequate public participation in planning for the use of the tract, (b) failure to achieve the most beneficial use of the tract, (c) failure to re-establish an adequate replacement for Boynton Park, (d) failure to follow open competitive bidding in effecting a sale of the tract, (e) failure to obtain an adequate price for the tract, (f) failure to require disclosure of the true identity of the purchaser-developer, (g) improperly permitting delays on the part of the purchaser-developer in submitting a firm proposal and in initiating improvements, and (h) failure to give adequate public notice of the various activities hereinabove referred to. The co-defendants are alleged to have participated in one manner or another in the foregoing improper activities of the Chattanooga Housing Authority.

The defendants, both by motion and in their answers, deny standing upon the part of the plaintiffs to maintain this lawsuit.

In connection with the evidentiary hearing upon the plaintiffs' motion for a temporary injunction, the fol-

lowing facts having reference to the issue of standing were made to appear. The plaintiff, Donald Wamp, owns property within Chattanooga and is accordingly a taxpayer of that city. He is an architect by profession. His only interest in the subject matter of the lawsuit is derived from his status as a municipal taxpayer and a resident architect. The plaintiffs, Mark K. Wilson, Jr. and Carl Gibson, were not identified in the evidentiary hearing, their interest in the lawsuit having been described in the complaint as taxpayers of "Chattanooga and/or Hamilton County, Tennessee". The plaintiff, Sherman L. Paul, is a non-resident of Chattanooga, but is a resident of Hamilton County, residing on Signal Mountain, Tennessee. He is a former county tax assessor and is President of the Moccasin Bend Association. His interest in the lawsuit is derived from his status as a taxpayer of Hamilton County and his position as President of the Moccasin Bend Association. The plaintiff, the Moccasin Bend Association, is a non-profit corporation having as one of its purposes the preservation and enhancement of historic and scenic landmarks in the Chattanooga Area, including Cameron Hill. The re-establishment of Boynton Park on Cameron Hill in a manner deemed adequate is an area of particular interest to the association and its members.

Suffice it to say in summary, the interest of each individual plaintiff is that of a civic minded taxpayer of the city or county wherein Cameron Hill is located. The interest of the corporate plaintiff is that of an association concerned with the preservation of local scenic and historic landmarks. Neither plaintiff asserts any ownership in Cameron Hill or any economic or financial interest in its disposition other than as taxpayers or, in the case of Moccasin Bend Association,

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as a civic improvement organization. Nor do they claim any special injury to themselves, different from that which might be asserted by any civic minded taxpayer or by any association concerned with the preservation and enhancement of local areas having scenic and historic attributes.

The rule in Tennessee is well established that citizens and taxpayers are without standing to maintain a lawsuit to restrain or direct governmental action unless they first allege and establish that they will suffer some special injury not common to citizens and taxpayers generally. *Patton* v. *City of Chattanooga*, 108 Tenn. 197, 65 S.W. 414 (1901). The reasons for the rule, as given in the *Patton* case, were variously stated to be that "Courts do not sit to declare abstract propositions of law" and that, "in matters common to all citizens, the law confers upon the duly elected representatives of the people the sole right to appeal to the courts for redress" and that "if the cities could not exercise public powers, even erroneously or unwisely, when lawfully done by their constituted legislative authority, without the concurrence of every citizen or taxpayer, it would be impossible to have municipal governments. . ." In the rather recent case of *Badgett* v. *Rogers*, 222 Tenn. 374, 436 S.W.2d 292 (1968), the Tennessee Supreme Court stated the rule to be as follows:

> "As a general rule of long standing in Tennessee, individual citizens and taxpayers may not interfere with, restrain or direct official acts, when such citizens fail to allege and prove damages or injuries to themselves different in character or kind from those sustained by the public at large."

The plaintiffs contend, however, that the allegations and facts in the present case bring them within an exception to the general rule, that exception being that a taxpayer may sue without averring or establishing any special injury where an illegal use of public funds is involved. The exception relied upon by the plaintiffs is stated as follows in *Badgett* v. *Rogers*, *supra*, 456 S.W.2d 292 at 294:

> "However the courts have recognized an exception to the general rule where it is asserted that the assessment or levy of a tax is illegal or that public funds are misused or unlawfully diverted from stated purposes."

Having thus stated the exception, it should be noted that the Court in the *Badgett* case nevertheless disallowed an action wherein a taxpayer sought to attack the legality of an expense allotment to a mayor, the expense allotment being in addition to his salary. The disallowance was predicated upon the conclusion that the taxpayer had made insufficient allegations of fact regarding the illegality of the expense allotment.

Under the allegations of the complaint, as well as under the facts as hereinabove found by the Court, it would appear that the plaintiffs were without standing to maintain this lawsuit in the Chancery Court of the State of Tennessee wherein it was originally filed. There is no contention made or evidence submitted that the plaintiffs, by reason of the matters complained of, have sustained any special injury or any injury other than that common to all civic minded taxpayers. In fact, the plaintiff, Moccasin Bend Association, does not even assert the status of a taxpayer. With regard to the contention of the individual plaintiff-taxpayers that they come within the exception announced in

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Badgett v. *Rogers, supra*, affording standing to a taxpayer to litigate an alleged misuse of public funds, there are two difficulties. The first is that the exception stated in the *Badgett* case refers only to the misuse of public funds, not to the misuse of public property. The present case involves the alleged mismanagement of property in an urban renewal project. Each case cited in the *Badgett* case in support of the exception therein stated pertains to the levying of an unlawful tax or the unlawful expenditure of public funds. The plaintiffs have cited no Tennessee case and the Court has been unable to find one wherein the courts of Tennessee have allowed a taxpayer claiming no special injury to maintain a suit for mismanagement of public property.

In the second place, while the complaint avers many irregularities upon the part of the Chattanooga Housing Authority in the disposition of the Cameron Hill tract and the evidence reflects that a number of unusual, if not questionable, practices were followed by that agency in the negotiation and awarding of a contract disposing of the Cameron Hill tract, the Court, with but one possible exception, is unable to find any specific instance of illegal conduct on the part of the Chattanooga Housing Authority or any other defendant with regard to that disposition. Rather, each action appears to have been within the legislative or administrative authority or discretion of the various agencies and defendants involved.

The only statutory provisions cited to the Court and contended to have been violated under the allegations of the complaint as filed in the state court were the provisions of section 1455(a)(ii) of Title 42 U.S.C. and T.C.A. § 13-821, wherein the agencies responsible

for urban renewal projects were required to "afford maximum opportunity" to private enterprise to effect redevelopment, and the provisions of section 1455(e)(1) of Title 42 U.S.C. wherein the local agency in charge of an urban renewal project is required, as a condition precedent to the awarding of a contract, to make public disclosure of "the name of the redeveloper . . . its officers and principal members, shareholders and investors, and other interested parties". There is no evidence of a violation of section 1455(a)(ii) or T.C.A. § 13-821. The Chattanooga Housing Authority does appear to have entered into a contract with a developer, Cameron-Oxford Associates, a limited partnership listing a trustee as the limited partner having a 95% partnership interest, but without making or requiring any public disclosure of equitable owners or beneficiaries of the trust. Whether this omission would constitute a sufficiently substantial failure on the part of the Chattanooga Housing Authority to constitute a statutory violation or whether such a violation would render any contract thereafter entered into void or voidable at the instance of the Chattanooga Housing Authority, the H.U.D., the F.H.A., or the United States attorney acting under his general authority, the Court does not here decide. Suffice it to say that such illegality, if in fact it be an illegality, affords no standing under Tennessee law to a taxpayer suffering no special injury therefrom to litigate the issue.

With regard to agency guidelines, a Chattanooga Housing Authority guideline alleged to have been violated was one providing that urban renewal tracts should be disposed of "under open competitive conditions". The evidence is undisputed that Chattanooga Housing Authority did solicit bids under "open competitive conditions", but, receiving only one bid, there-

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upon proceeded to engage in extensive, prolonged and private negotiations with the bidder, its successors and assigns, for the disposition of the Cameron Hill tract. Such action on the part of a public agency dealing with public property was, in the Court's opinion, most inappropriate. It does not appear to have been in violation of any law.

Another agency guideline alleged to have been violated was the requirement that urban renewal tracts be disposed of for "fair value" and "in a fair and equitable manner". H.U.D. having approved the sale here under attack, both the generality of the guidelines and the nature of the evidence provide no basis for the substitution of judicial discretion in lieu of agency discretion as to whether the disposition was effected in a "fair and equitable manner" or as to what may have been a "fair value" for the property under the limitations and conditions of the sale.

It is the further insistence of the plaintiffs that the defendants, and in particular the Chattanooga Housing Authority, acted illegally in failing to re-establish a park of adequate size and appropriate location on Cameron Hill to replace the former Boynton Park. The plaintiffs' contention in this regard appears to be that the title of Chattanooga Housing Authority to the Cameron Hill tract was impressed with a trust to this effect. The evidence fails to reflect, however, that the Chattanooga Housing Authority held title to the Cameron Hill tract subject to any such equitable encumbrance or duty. Rather, it appears that the Chattanooga Housing Authority acquired clear title to the entire Cameron Hill tract some 15 years ago, including the former municipal park located thereon. Cameron Hill has remained undeveloped and unused since its acquisition by the Chattanooga Housing Authority. In fact, some 10

or 12 years ago the entire top portion of the hill was removed to acquire fill material for a highway project. At that time litigation was initiated by citizens and taxpayers against the Chattanooga Housing Authority in an effort to prevent the dispoilation of the hill and to preserve the Boynton Park area. The litigation resulted in an adjudication by the Tennessee Supreme Court that "the bill fails to show any proposed illegal action of the Housing Authority" and "these complainants are entitled to no rights in Boynton Park other than those common to all citizens of Chattanooga". *See Mrs. Sim Perry Long, et al.* v. *Chattanooga Housing Authority, et al.* (unpublished opinion entered November 9, 1962).

The Court is of the opinion that no genuine issue of fact exists but that the plaintiffs were without standing to maintain this lawsuit in the Chancery Court of Hamilton County, Tennessee, wherein it was originally filed and wherein it was pending at the time of removal to this court. The plaintiffs being without standing to maintain the lawsuit, the Tennessee Chancery Court was without jurisdiction to entertain the lawsuit. The state court being without jurisdiction, this Court is, by derivation, likewise without jurisdiction. The lawsuit must accordingly be dismissed.

In view of the conclusion herein reached, it becomes unnecessary and inappropriate to consider the further contentions and motions in the case, including the contentions of the parties with regard to the plaintiffs' standing or lack of standing under the federal law, and including the plaintiffs' motions to amend their complaint and for a temporary injunction.

An order will enter dismissing this lawsuit for lack of jurisdiction.

/s/ Frank W. Wilson
United States District Judge

BLEED THROUGH

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE, SOUTHERN DIVISION

CIV-1-74-41

DONALD L. WAMP; MARK K. WILSON, JR.; CARL L. GIBSON; SHERMAN L. PAUL; and MOCCASIN BEND ASSOCIATION, a Tennessee non-profit corporation,

Plaintiffs

-vs.-

CHATTANOOGA HOUSING AUTHORITY, a Tennessee corporation; CITY OF CHATTANOOGA, TENNESSEE, a municipal corporation; CAMERON-OXFORD ASSOCIATES, an Indiana limited partnership; ADVANCE MORTGAGE CORPORATION, a Delaware corporation; MILLIGAN-REYNOLDS GUARANTY TITLE AGENCY, INC., a Tennessee corporation; THE UNITED STATES OF AMERICA, ex rel the UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT and also ex rel the FEDERAL HOUSING ADMINISTRATION,

Defendants

JUDGMENT OF DISMISSAL

(Filed September 19, 1974)

This is an action in which the plaintiffs seek injunctive relief with reference to a tract of land within an urban renewal project. The case is presently before the Court upon various motions, including motions by

the defendants for summary judgment. For the reasons set forth in an opinion filed herein, it is the judgment of the Court that the case should be dismissed for lack of jurisdiction.

It is accordingly ORDERED that the defendants' motion for summary judgment be sustained and that the lawsuit be and the same is hereby dismissed for lack of jurisdiction.

APPROVED FOR ENTRY.

/s/ Frank W. Wilson
United States District Judge

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No. 75-1192

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

DONALD L. WAMP, ET AL.,
Plaintiffs-Appellants,

v.

CHATTANOOGA HOUSING AUTHORITY, ET AL.,
Defendants-Appellees.

APPEAL from the United States District Court for the Eastern District of Tennessee.

Decided and Filed December 5, 1975.

Before: PHILLIPS, Chief Judge, and PECK and MILLER, Circuit Judges.

PER CURIAM. This action was filed to enjoin the construction of an apartment complex on Cameron Hill, a local landmark in Chattanooga, Tennessee, where municipally owned Boynton Park formerly was located. The suit was initiated in the State Chancery Court and was removed by the defendant to the United States District Court.

In an opinion published at 384 F.Supp. 251 (E.D. Tenn. 1974), Chief District Judge Frank W. Wilson held that the plaintiffs did not have standing under Tennessee law to maintain the suit in Tennessee Chan-

cery Court and that the District Court therefore had no removal jurisdiction. Accordingly, the action was dismissed. Plaintiffs appeal. Reference is made to the reported decision of the District Court for a recitation of the pertinent facts.

Appellants contend that the District Court incorrectly construed the relevant Tennessee decisions and, therefore, they have standing to sue under Tennessee state law. We hold that the District Court correctly construed and applied the controlling decisions of the Supreme Court of Tennessee. *Sachs* v. *County Election Commission*, 525 S.W.2d 672, 673 (Tenn. 1975); *Bennett* v. *Stutts*, 521 S.W.2d 575, 576 (Tenn. 1975); *Badgett* v. *Rogers*, 436 S.W.2d 292, 294 (Tenn. 1968); *Patton* v. *City of Chattanooga*, 108 Tenn. 197, 65 S.W. 414 (1901).

The Supreme Court of Tennessee ruled to the same effect in its decision in another case involving the Cameron Hill area in Chattanooga. In an action filed in Chancery Court, a group of interested citizens and taxpayers sought to enjoin the Chattanooga Housing Authority and the City of Chattanooga from altering or changing the natural contours or topography of Boynton Park and abolishing it as a public park. In an unpublished decision announced November 9, 1962, the Supreme Court of Tennessee said:

> Second, these complainants are entitled to no rights in Boynton Park other than those common to all citizens of Chattanooga.
>
> Tennessee decisions holding as above stated are legion. It is said that the leading case is Patton v. Chattanooga, 108 Tenn. 197.

It is further asserted by appellants that, even if the District Court was correct in its interpretation of

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Tennessee law, they have standing as a matter of federal law. We agree with the District Court that if appellants had no standing to maintain the action in the State court, the District Court had no removal jurisdiction.[1]

In *Lambert Co.* v. *Baltimore & Ohio R.R. Co.*, 258 U.S. 377, 382 (1922), the Supreme Court, speaking through Mr. Justice Brandeis, said:

> The jurisdiction of the federal court on removal is, in a limited sense, a derivative jurisdiction. If the state court lacks jurisdiction of the subject-matter or of the parties, the federal court acquires none, although it might in a like suit originally brought there have had jurisdiction.

Lambert was followed and applied in this court in *Bancohio* v. *Fox*, 516 F.2d 29 (6th Cir. 1975), in which numerous other decisions are cited to the same effect. *See also Friedr. Zoellner Corp.* v. *Tex. Metals Co.*, 396 F.2d 300, 301 (2d Cir. 1968).

The decision of the District Court is affirmed. Costs on this appeal are taxed against appellants.

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1. Even if federal standing decisions were applicable, appellants would be met by the decisions of this court in *Gibson & Perin Co.* v. *City of Cincinnati*, 480 F.2d 936 (6th Cir. 1973), cert. denied, 414 U.S. 1068 (1973); and *South Hill Neighborhood Association* v. *Romney*, 421 F.2d 454 (6th Cir. 1969), *cert. denied*, 397 U.S. 1025 (1970).

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 75-1192

DONALD L. WAMP, ET AL.,
Plaintiffs-Appellants,

v.

CHATTANOOGA HOUSING AUTHORITY, ET AL.,
Defendants-Appellees.

Before: PHILLIPS, Chief Judge, and PECK and MILLER, Circuit Judges.

JUDGMENT

(Filed December 5, 1975)

APPEAL from the United States District Court for the Eastern District of Tennessee.

THIS CAUSE came on to be heard on the record from the United States District Court for the Eastern District of Tennessee and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

It is further ordered that Defendants-Appellees recover from Plaintiffs-Appellants the costs on appeal,

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as itemized below, and that execution therefor issue out of said District Court if necessary.

Entered by Order of the Court.

/s/ John P. Hehman
Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE, SOUTHERN DIVISION

CIVIL ACTION NO. 1-74-41

DONALD L. WAMP, et al.
Plaintiffs

v.

CHATTANOOGA HOUSING AUTHORITY, et al.

ORDER ON MANDATE

The plaintiffs-appellants having appealed to the United States Court of Appeals for the Sixth Circuit from the judgment of the District Court entered on September 19, 1974, dismissing the case, and the United States Court of Appeals for the Sixth Circuit having entered its judgment on December 5, 1975, issued as mandate on January 8, 1976, and received and filed herein by the Clerk on January 9, 1976, wherein it was ordered that the judgment of the District Court be affirmed;

Now, therefore, upon the mandate of the United States Court of Appeals for the Sixth Circuit issued January 8, 1976, and received and filed herein by the Clerk on January 9, 1976, it is ORDERED and ADJUDGED that the judgment entered herein on the 19th day of September, 1974, be and the same is hereby made final.

ENTER:

/s/ Frank W. Wilson
United States District Judge